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2011 IL App (3d) 110363-U

Order filed September 30, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

A.D., 2011

<i>In re</i> M.A.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Minor,	)	Will County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	Appeal No.. 3-11-0363
Petitioner-Appellee,	)	Circuit No. 11-JA-38
	)	
v.	)	
	)	
Courtnee A.,	)	Honorable
	)	Paula Gomora
Respondent-Appellant.)	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices McDade and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1     *Held:* The trial court's finding that there was probable cause to believe that the minor was neglected was not against the manifest weight of the evidence. However, the trial court exceeded its statutory authority when it entered an order granting residential custody of the minor to father and closing the juvenile case at the time of the shelter care hearing. The cause is remanded to the trial court for further proceedings.
- ¶ 2     Courtnee A. and Shane A. are the biological parents of the minor, M.A. On March 11,

2010, the trial court conducted a shelter care hearing on the State's juvenile petition. The court found that there was probable cause to believe that M.A. was a neglected minor due to an injurious environment. After making this finding, the court then entered an order granting residential custody of the minor to father, Shane A., and closing the juvenile file. Mother filed a timely notice of appeal challenging the court's finding of neglect and the court's authority to grant father custody of the minor child. We affirm in part, reverse in part, and remand for further proceedings.

¶ 3

### FACTS

¶ 4 On March 10, 2011, the State filed a juvenile petition alleging that Courtnee A. and Shane A. were the parents of the minor child, M.A., born on November 11, 1998. The petition identified the minor as living with her mother and alleged the minor was neglected due to an injurious environment.

¶ 5 On March 11, 2011, the trial court conducted a shelter care hearing with mother and father present in court, along with respective counsel. The State called Dwayne Hall, a DCFS investigator, who took protective custody of the minor on March 9, 2011.

¶ 6 Hall testified that on March 9, 2011, the police received a telephone call reporting that mother was intoxicated and trying to drive away from her residence with the minor. When the police responded to this call, they found mother extremely intoxicated and concluded mother could not provide adequate care for the minor. The police called an ambulance and transported mother to the hospital for observation and placed the minor with her maternal grandmother.

¶ 7 Hall later interviewed the minor and learned mother threw a handgun at the minor on the day the minor was placed in grandmother's care. The minor also told Hall that mother hit and

kicked her on March 9, 2011. However, the minor did not need any medical attention. Hall testified that according to the divorce decree, mother and father had joint custody of the minor, and father was willing to care for the minor.

¶ 8 Hall stated that he previously conducted an investigation involving this mother in January 2011 for inadequate supervision of the minor while living with Richard Werges, mother's paramour. According to Hall, Werges complained that mother was leaving the child alone for several hours during the night, during the weekends, and while she worked. Hall also testified mother was arrested in January 2011 after consuming alcohol and becoming involved in an altercation with Werges. Further, Hall's background check of mother revealed an arrest for unlawful possession of a controlled substance in 2006, but Hall was unsure as to a conviction. Hall said that he had not discussed the 2006 felony case with mother, and he had not discussed whether mother had participated in any prior alcohol treatment.

¶ 9 Following Hall's testimony, the State submitted exhibit No. 1 to the court which contained a copy of mother's and father's agreed final decree of divorce entered by the court of Montgomery County, Texas on December 21, 1999. The decree appointed mother and father as joint managing conservators of the minor, but granted mother the exclusive right to establish the minor's primary residence.

¶ 10 The prosecutor asked the court to take judicial notice of the minute entry entered on January 14, 2011, in cause No. 11-OP-89 where Werges sought an emergency order of protection against mother. The prosecutor also asked the court to take judicial notice of mother's guilty plea to the offense of unlawful possession of a controlled substance on March 6, 2007, in cause No. 06-CF-1926. The trial court overruled mother's objection to the request to take judicial notice of

mother's felony file.

¶ 11 Father testified before the court and told the court that he lived in Texas with his current wife and children, other than M.A. He stated that he paid child support to M.A.'s mother and provided health insurance coverage for the minor. He testified that after learning about the events from Hall in 2011, he traveled to Illinois. Father stated that he had sufficient room in his home for the minor and that he and his new wife could provide the minor with a safe environment in Texas. According to father, the minor lived with him for a few months in 2008 because mother was injured in an accident. After the minor returned to mother, father lost contact with the minor from Christmas 2008 until recently because mother moved and did not provide him with current address information or telephone numbers. Father explained to the court that he spoke to the minor prior to court, and the minor indicated that she wanted to stay with him.

¶ 12 The prosecutor asked the court to conduct an *in camera* interview with the minor, along with the attorneys. The minor said she and her father discussed her returning to live with him and indicated she wanted to live with her father. When asked if she wanted to live permanently or temporarily with her father, the minor said that as long as she had visitation with her mother, she "would be fine with living with him [father] unless something went wrong."

¶ 13 The court asked the minor about her mother. The minor said mother did not want her to talk to the minor's father because mother believed father would take the minor away and not allow mother to see the minor. Minor said that mother "had been drinking a lot," but she did not know why. Minor also said that mother was "not always abusive and stuff, but she's not really happy when she's drunk. She's kind of mean." The minor told the court that mother's drinking

had been occurring for the past one or two years. The minor said that mother did not drink alcohol every day but that she would frequently drink at night or she would start during the day and get drunk. The minor explained that mother went to work drunk and was fired. Minor stated that mother also took medication and antidepressants and that when she drank, mother would "be really weird." She also told the court that her mother hit Werges.

¶ 14 The minor acknowledged to the court that she had been cutting herself for the past few months because "mom wasn't home a lot because she had to work and stuff, and I just didn't really like myself." She said that her mother left her alone at the house for numerous hours each day.

¶ 15 After hearing arguments from the attorneys, the court entered a written order finding there was probable cause to believe that the minor was neglected because the "minor's environment is injurious to minor's welfare in that her mother suffers from alcohol addiction and when intoxicated cannot take care of the minor." The trial court's written order also provided that the court found that immediate and urgent necessity did not exist "to remove minor from her parents in that her father is able to provide safe environment to minor."

¶ 16 The court also verbally stated that there was "no basis to find that [father] is not a fit parent" and the court "has no reason and the State has no reason to intervene and provide services to fit parents." The court also announced that while the divorce decree established joint custody with mother having primary residential custody, "based upon this proceeding, residential custody will now be with [father]. The court said that there would be no further orders in this jurisdiction and the matter would be closed.

¶ 17 The court went on to advise the parties that the divorce decree "must be modified." The

court advised mother that she had “all the rights you would in Texas to challenge the decree or to challenge the modification, but you will be appearing in Texas to do it.” The court’s written order provided that “[f]ather shall have residential custody of [M.A.] and the above matter is closed. Parties are admonished about change of custody and need for both parents to provide stable future for [M.A.] for her sake.”

¶ 18 On April 1, 2011, mother filed a motion for reconsideration claiming probable cause did not exist to believe the minor was neglected and that the court exceeded the scope of its authority by giving permanent and full custody of the minor to father. On May 17, 2011, the trial court conducted a hearing and denied mother's motion for reconsideration. Mother filed a timely notice of appeal.

¶ 19 ANALYSIS

¶ 20 On appeal, mother claims that the trial court’s finding that the minor was neglected due to an injurious environment was manifestly erroneous. The State, father, and counsel for the minor contend that the evidence supported the court's finding that probable cause existed to believe that the minor was living in an injurious environment.

¶ 21 Alternatively, mother claims that if the evidence supported the court’s finding of neglect, then the court exceeded its authority by granting father custody of the minor. Mother requests this court to reverse the trial court’s order finding probable cause and allowing father to have residential custody of the minor and requests this court to return the minor to mother’s custody. Both the State and father request this court to affirm the trial court’s findings and the trial court’s decision to close the juvenile matter.

¶ 22 The minor’s attorney agrees with mother that the trial court exceeded its statutory

authority by granting residential custody to father following the temporary custody hearing.

However, the minor's attorney requests this court to remand the cause to the trial court to schedule an adjudicatory hearing after reversing that portion of the court's order granting father permanent custody and closing the juvenile file.

¶ 23 In this case, it is clear the trial court made a preliminary finding, following a temporary custody hearing, that probable cause existed to believe that the minor was neglected due to an injurious environment as alleged in the petition. See 705 ILCS 405/2-9(1), 2-10 (West 2010). However, a finding of probable cause is *not* equivalent to a finding of neglect on the ultimate merits of the petition. *In re I.H.*, 238 Ill. 2d 430, 441 (2010). Thus, contrary to mother's assertion, the court did *not* find the minor to be a neglected minor due to an injurious environment.

¶ 24 However, the court did make a finding of probable cause. This determination will not be disturbed absent an abuse of discretion or a judgment that is against the manifest weight of the evidence. *In re Niki K.*, 374 Ill. App. 3d 795, 800 (2007) (citing *In re A.H.*, 195 Ill. 2d 408, 425 (2001)).

¶ 25 In this case, the finding of probable cause is supported by the record. First, the court heard testimony from Hall, the DCFS investigator, testimony from the minor, and took judicial notice of mother's prior guilty plea for the offense of unlawful possession of a controlled substance. In addition, the minor informed the court that mother frequently left the minor alone, was physically abusive toward the minor and others, and lost her job due to intoxication. Mother did not offer any contradictory testimony. Moreover, the minor stated that her mother's actions caused the minor to become so unhappy that she began cutting herself in recent months. Based

upon this record, we conclude that the court's finding that probable cause existed to believe that the minor was neglected due to an injurious environment was not against the manifest weight of the evidence.

¶ 26 Next, we turn to mother's contention that the trial court exceeded its statutory authority by closing the juvenile file after giving father custody of the minor child. Whether the circuit court properly exercised its statutory authority and jurisdiction is a question of law which we review *de novo*. *In re Lawrence M.*, 172 Ill. 2d 523 (1996); *In re John C.M.*, 382 Ill. App. 3d 553, 558 (2008); *In Interest of Rami M.*, 285 Ill. App. 3d 267, 271 (1996).

¶ 27 The case law provides that acts of the court that exceed the bounds of the court's subject matter jurisdiction are void. *In re M.M.*, 156 Ill. 2d 53, 64 (1993). Section 2-10(2) of the Act provides that once the court finds probable cause exists to believe that the minor is neglected, the court must then determine whether it is in the minor's best interest to be *released* to a parent or placed in temporary shelter care with another person or agency pending the outcome of the adjudicatory hearing. 705 ILCS 405/2-10(2) (West 2010). A temporary custody hearing determines whether the minor can be "released" to a parent or whether the court will temporarily "prescribe shelter care and order that the minor be kept in a suitable place designated by the court" outside the care of the minor's parents. 705 ILCS 405/2-10(2) (West 2010). Thus, a temporary custody hearing determines placement pending the date of the adjudicatory hearing rather than deciding the custodial rights of the minor's parents.

¶ 28 The trial court's written order provided that "[f]ather shall have residential custody of [M.A.] and the above matter is closed." The court also indicated no further orders of the court were necessary regarding custody. It is clear from the court's written order that the court did not



enter a temporary order *releasing* the minor into her father's care pending the adjudicatory hearing. Instead, the court entered an order granting father “residential custody” of the minor on an indefinite basis and terminating the juvenile court's involvement.

¶ 29 Accordingly, we conclude that the trial court exceeded its authority by granting custody of the minor to father on an indefinite basis rather than temporarily *placing* the minor with her father and then setting an adjudicatory hearing on the merits of the petition. See 705 ILCS 405/2-23(1) (West 2010); *In re C.L. and T.L.*, 384 Ill. App. 3d 689, 693 (2008). After the filing of a petition, the Act requires the court to conduct an adjudicatory hearing within 90 days in order to determine whether the minor was, in fact, neglected based on the allegations of the petition. See *In re S.G.*, 277 Ill. App. 3d 803 (1996); 705 ILCS 405/2-14 (West 2010). Consequently, it was premature for the court to terminate the juvenile proceeding before an adjudicatory hearing took place. 705 ILCS 405/2-21, 2-22 (West 2010).

¶ 30 CONCLUSION

¶ 31 The judgment of the circuit court of Will County finding probable cause to believe that the minor was neglected due to an injurious environment is affirmed. The judgment of the circuit court of Will County granting father custody of the minor on an indefinite basis and closing the juvenile file is reversed. The cause is remanded to the trial court to enter a temporary order releasing the minor into her father's care and then setting the matter for an adjudicatory hearing on the merits.

¶ 32 Affirmed in part; reversed in part and remanded with directions.